

**LODI CITY COUNCIL  
SPECIAL CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, DECEMBER 10, 2008**

A. Call to Order / Roll Call

The Special Meeting of the City Council was called to order by Mayor Hansen at 6:34 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Public Hearings

B-1 Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised Environmental Impact Report Regarding the Lodi Shopping Center Project Located at 2640 West Kettleman Lane (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider the appeals of Browman Development Company and Wal-Mart Stores, Inc., regarding the decision of the Planning Commission to not certify the final revised Environmental Impact Report (EIR) regarding the Lodi Shopping Center project located at 2640 West Kettleman Lane.

Brett Jolley, representative of Lodi First from Herum and Crabtree, requested that the meeting be continued to another location, possibly Hutchins Street Square, in light of the individuals who still remained outside the building and the weather. Mayor Hansen stated access into the building was provided on a first come, first serve basis, the current location is suited for Internet and television purposes, and everyone who wishes to provide comment will have an opportunity to do so.

Alexis Palosi, representative of Browman Development Company, stated access into the building was based on safety limitations and first come first serve. Ms. Palosi urged a rotation of the speakers to all those who wish to speak to have an opportunity to do so.

City Attorney Schwabauer stated everyone will have an ability to address the Council and provide public comment. In response to Council Member Hitchcock, Mr. Schwabauer stated there is no case law that requires an agency to provide a larger room for a hearing. Mr. King stated the process was addressed on a first come first serve basis as best as possible in light of the concerns enumerated at the Planning Commission meeting.

Council Member Hitchcock made a motion, second by Council Member Mounce, to change the date and venue of the public hearing.

The above motion **failed** by the following vote and the hearing proceeded:

Ayes: Council Member Hitchcock and Council Member Mounce

Noes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Absent: None

City Manager King briefly introduced the subject matter of the appeal regarding the Lodi Shopping Center.

Community Development Director Rad Bartlam provided a PowerPoint presentation regarding the appeal of the Lodi Shopping Center. He specifically discussed the final revised EIR, background, zoning and vicinity map, aerial view, summary of environmental and other impacts including energy and agricultural, additional project objectives, alternative project location, and landscape plan.

In response to Council Member Hitchcock, Mr. Bartlam stated the City Council previously approved the additional square footage at Reynolds Ranch, the updated memorandum stated the impacts did not rise to the level of significant impacts, and Bay Area Economics did the same level of analysis for initial and additional reviews.

In response to Council Member Hitchcock, Mr. Bartlam stated there is no specific relationship between the proposed project and Mervyns with respect to blight. Mr. Bartlam stated economics are looked at generally and with urban decay there may be a business that closes causing some graffiti and vandalism over a period of time. Mr. Bartlam stated declining sales and closures alone do not rise to the level of urban decay as retail capacity in and outside the City, along with other factors, are considered.

In response to Council Member Hitchcock, Mr. Bartlam stated the appellants submitted a letter, which outlines the proposed building activities; although, absent actual plans, the LEED certification possibilities of the project are unknown. Mr. Bartlam stated certain conditions may be implemented as a part of the use permit.

In response to Mayor Hansen, Mr. Bartlam confirmed that the City Council previously reviewed the project, certified the EIR, after which the proponents took the matter to court, the court found the report to be deficient in the areas of urban decay and energy, the remainder of the report was found to be sufficient, and the court ordered the City to void project approvals pending correction of the insufficiencies, which is what brings the matter before the Council at this time.

Mayor Hansen, pursuant to requirements for quasi-judicial matters, disclosed he spoke with Steve Herum of Herum and Crabtree, Chris Podesto of Food 4 Less, Daryl Browman as the developer of the project, and Erin Rios and Jessica Berg of Wal-Mart. Mayor Pro Tempore Katzakian disclosed he spoke with Daryl Browman and Chris Podesto. Council Member Hitchcock disclosed she spoke with Daryl Browman. Council Member Mounce disclosed she spoke with Daryl Browman and Chris Podesto. Council Member Johnson disclosed he spoke with Chris Podesto and Daryl Browman.

In response to Mayor Hansen, Mr. King confirmed that the City Council has the minutes from the Planning Commission and some Commissioners are present for questions if needed. Mr. Schwabauer stated that the matter is quasi-judicial and there cannot be a commitment to a specific position prior to making a decision.

Planning Commission Chair Wendel Kiser provided a brief summary of the Planning Commission meeting discussing the vote of 5-1-1 (opposed, favor, absent), questions regarding LEED building and similar standards, tax revenue generation, urban decay, job creation and loss, Measure R application, average wage of employees, agricultural mitigation, effects of the Reynolds Ranch approval, sales tax generation, and AB 32 application for energy.

In response to Council Member Hitchcock, Mr. Kiser stated a majority of the Planning Commission did not necessarily disagree with the project, but felt that the concerns and questions that were raised were not addressed in a clear enough manner to feel comfortable with an approval of the report.

Daryl Browman, the developer of the project, provided a brief presentation regarding the proposed project. He specifically discussed the project encompassing 20 to 30 businesses in addition to Wal-Mart, the history of the company as a member of the community for 16 years, original development of Wal-Mart at Kettleman Lane and Lower Sacramento Road, the intent to build projects for long-term viability for 20 or more years with non-merchant development, 99% to 100% occupancy with existing owned projects, similar projects in surrounding cities in Central Valley and Bay Area, overall project vacancy in current projects, letters of support from current tenants, the goal of solidifying the intersection as a dominant retail area, statistics illustrated in the Navigant report, potential for increased sales tax and building permits, expansion of the trade area, and adequate address of the issues in the environmental warranting a certification.

Andrea Leisy, attorney for Browman Development Company, stated she received a letter from the opponents of the project today, the opponents are limited to addressing only the issues of energy and urban decay procedurally and the entire EIR is not open for review. Ms. Leisy stated the City has evidence to support the baseline analysis and a review of every possible change is not necessary.

In response to Council Member Hitchcock, Mr. Browman stated the sales tax data in the Navigant report is factual, he is experienced in building around discount retailers and tenants, his focus is to expand the trade area, supercenters do more sales business than regular Wal-Mart, the synergy in a given trade area creates more business with additional tenants such as Best Buy, and the existing Food 4 Less was originally doing half the volume.

In response to Council Member Johnson, Mr. Browman stated he is not able to provide specific names of possible tenants due to corporate approvals, the current building has no restrictions, there is approximately 85% tenant occupancy pending availability dates, the current building is owned by Browman which provides incentive for occupation along with other tenant support, new development from the ground up is more expensive focused on right tenant, new development from ground up is much more expensive even if existing building is demolished due to initial site approvals, and certain retailers are going to continue to expand regardless of the market conditions.

In response to Council Member Mounce, Mr. Browman confirmed that smaller businesses are struggling more in the economy than retailers, the \$190,000 increase from the current Wal-Mart to a Supercenter Wal-Mart, and referenced the methodology used for sales tax revenue. Mr. King confirmed that cost is approximately the equivalent to an officer with a car and stated it is important to consider sales tax revenue for the existing building.

In response to Mayor Pro Tempore Katzakian, Mr. Browman stated the four corners of Kettleman Lane and Lower Sacramento Road can be seen as a destination for the outside community as well.

In response to Council Member Hitchcock, Mr. Browman stated the next nearest Wal-Mart in relation to Target is in Modesto and Riverbank draws as far as Sonora, although Riverbank does not have a Wal-Mart.

Brett Jolley provided a presentation and specifically discussed the issue of whether the EIR is sufficient enough to certify and return to the court, the Planning Commission's decision to not certify the EIR based on a lack of information, the role of the Planning Commission, the City's requirement to return to court to discharge the writ, possible remand to Planning Commission, the need to address urban decay with regard to an inaccurate environmental setting and redevelopment area inclusion, findings in an EIR based on sufficient evidence rather than insufficient evidence, the lack of adequate alternatives which do not meet the two prong test, four other alternatives which may be included for Reynolds Ranch, east Lodi redevelopment area,

reduced size alternatives, and a high efficiency model supercenter.

Don Mooney, attorney for Citizens for Open Government, provided a presentation and specifically discussed the second lawsuit for previous approvals, an existing agreement regarding reserving prior claims, no res judicata application for third party claims after recertification or those claims reserved and litigated, all documentation provided to Council to be a part of the administrative record, greenhouse gas emissions application, technical report to the Planning Commission describing requirements to address emissions based on California Environmental Quality Act (CEQA) requirements, the Planning Commission finding of insufficient information, and need to remand to the Planning Commission for further review.

In response to Council Member Hitchcock, Mr. Mooney explained the Planning Commission decision stating there was not enough information goes to evidence as the standard of review is whether or not there is sufficient evidence and the Planning Commission determined it was insufficient.

In response to Council Member Hitchcock, Mr. Jolley discussed the 22-page letter submitted for review, clarification regarding insufficient evidence versus substantial evidence and the related issues of law, CEQA is to be liberally construed, overriding considerations for substantial evidence although there is no direct case on point, the conclusion of the Stanislaus case finding great weight should be given to Planning Commission decisions, the need for the EIR to look at a reasonable range of alternatives, mitigation for significant impacts, and the lack of enforceable measures for energy features in the project.

In response to Council Member Johnson, Mr. Jolley stated redevelopment ties in with urban decay because there is a need to look at what the situation is on the ground, and the EIR ignores the fact that the east side has a redevelopment area that was approved by Council, which finds blight in the east side of town.

In response to Council Member Johnson, Mr. Bartlam stated the City Council rescinded the prior redevelopment approval approximately five to six years ago.

In response to Council Member Johnson, Mr. Jolley stated blight in the east side is not analogous to Mervyns and the economy because there is an obligation to consider impacts on the community at large and the fact that Lodi does have blight needs to be considered.

In response to Mayor Hansen, Mr. Jolley stated he cannot predict what a court will do at this time, he can only address the legal concerns, and other cities have returned similar decisions to the Planning Commission, although he has not specifically seen the case with an EIR.

Andrea Leisy discussed the independent discretion of the City Council to act in certifying the EIR, CEQA address of social concerns if reasonably foreseeable and current reference in baseline analysis, considerations regarding competition and vacancies, the importance of the climate change address which does not require a global level analysis, water supply assessment application for specific projects only, and the inability to include Reynolds Ranch as an alternative because the developer does not own the land.

Mr. Jolley stated res judicata is not applicable because citizens can bring up other issues including global warming and gas emissions for AB 32 and the cut off time is generally the release of the draft EIR.

Mr. Mooney stated the greenhouse gas emissions are a part of the EIR and not only comments, additional building permits may be to growth including factors requiring review in the EIR, and

water supply requirements and the number of potential employees must be addressed as well.

In response to Council Member Hitchcock, Mr. Mooney stated if there was a growth in building permits it would need to be addressed in the EIR as a growth inducing factor. Mayor Hansen opened the public hearing to receive public comment.

Jack Gorton spoke in favor of the proposed certification based on possible benefits to the poor in the community.

Alan Flemming spoke in opposition to the proposed certification based on concerns regarding the lack of support for organized youth sports from Wal-Mart and the existing support from local businesses.

Mark Anaforian spoke in opposition to the proposed certification based on concerns regarding the negative affect on other businesses, lack of sales tax generation, employment numbers leveling off in a few years, increased foot traffic, and option to expand in existing space.

Pedro Cahue spoke in opposition to the proposed certification based on general concerns.

Rolando Aguilar spoke in favor of the proposed certification based on Mr. Browman being a good employer and properly maintaining landscaping for existing properties.

Rick Croffer spoke in opposition to the proposed certification based on concerns regarding location and negative effect on roads.

Victor DeMelo spoke in favor of the proposed certification based on the success of current Browman tenants and job creation in retail and construction.

Robert Evans spoke in opposition to the proposed certification based on concerns regarding the economy, job salaries and full-time status, current tenant vacancies, and lack of sales tax with only the addition of groceries.

Russ Tanner spoke in favor of the proposed certification, as an employee for 14 years, based on Wal-Mart's positive address of issues pertaining to the environment, green building, Title 24 application, energy management features, and customer service. Council Member Mounce suggested it is now possible to go to a T5 level.

Brad Clark spoke in opposition to the proposed certification based on concerns regarding parking and competition for grocery stores.

Ken Ginoulis spoke in favor of the proposed certification based on local sales tax increase and community involvement by Wal-Mart.

Howard Rempfer spoke in opposition to the proposed certification based on concerns regarding the parking of trucks and loss of jobs for other businesses.

Denise Joyner spoke in favor of the proposed certification based on tax dollars and revenue staying local within the City of Lodi.

Gene Davenport of the San Joaquin County Labor Council spoke in opposition to the proposed certification based on concerns regarding value of wages and benefits provided by Wal-Mart and pending litigation regarding the same.

Cheryl Nitchke spoke in favor of the proposed certification based on Wal-Mart not hurting the downtown area because those businesses are specialty shops that customers will continue to frequent.

Richard Sarris of Food 4 Less spoke in opposition to the proposed certification based on concerns regarding developments owned by other developers.

Julie Parker as an employee spoke in favor of the proposed certification based on the employment benefits to the community on the east side of town. In response to Council Member Hitchcock, Ms. Parker stated only those attendees at the meeting wearing name badges are on the clock and being paid.

Betty Peters spoke in favor of the proposed certification based on the layout of Wal-Mart stores, wide aisles, personal treatment, and best buys.

Pat Patrick of the Chamber of Commerce spoke in favor of the proposed certification based on the Board's belief in synergy of retail at the four corners location, more job creation, free enterprise and consumer choice. In response to Council Member Hitchcock, Mr. Patrick stated that, while the Chamber did not poll its membership, input was provided by all committees to the Board.

Jennifer Bond spoke in opposition to the proposed certification based on concerns that the EIR remains vague and inconclusive and the Planning Commission's decision to not certify.

Christopher Wallace spoke in favor of the proposed certification based on benefits to the City and residents, Wal-Mart involvement with community organizations, and Measure R application to larger businesses.

John Hale as an employee spoke in favor of the proposed certification based on salary and benefits for employees and the encouragement of competition and free enterprise.

Alesha Pichler spoke in opposition to the proposed certification based on concerns regarding ability to attract other retailers and overall financial stability.

Tim Jacobson as District Manager spoke in favor of the proposed certification based on the draw for outside shoppers, new retail development, and the company's goal to comply with all State laws by paying employees at all times when they are representing the company.

Gary Silva spoke in opposition to the proposed certification based on concerns regarding the economy and recession, the need for unique stores, and the Planning Commission's decision regarding the same.

Daniel McNeer as an employee spoke in favor of the proposed certification based on current Browman tenants being in favor of the proposed project.

Chris Podesto spoke in opposition to the proposed certification based on concerns regarding the revised EIR, an increase of only \$190,000, the Planning Commission decision to not certify, urban decay, and negative effect on Food 4 Less suggesting decreases of up to 40%.

Michael Donrao of Precision Painting spoke in favor of the proposed certification based on the levels of standards mandated by the Browman Development Company and the good condition of their developments.

Dennis Sattler spoke in opposition to the proposed certification based on concerns regarding the economy and proper address of issues in the EIR.

Mona Shulman of Pacific Coast Producers (PCP) spoke in favor of the proposed certification, stating the goal of the business is to sell \$450 million in product, which is in part due to Wal-Mart.

James Lanchester spoke in favor of the proposed certification based on keeping revenue local, continued patronage to other stores including Food 4 Less, and the Council's control over development.

Bill Freitas spoke in opposition to the proposed certification based on the economy and closing of stores and the decision of the Planning Commission to not certify.

Mary Laughlin of Big Brothers and Big Sisters spoke in favor of the proposed certification based on the support of Wal-Mart for management, employees, and the community.

Carl Rosicis spoke in opposition to the proposed certification based on concerns regarding the lack of need for another grocery store, competition for smaller businesses, and the decision of the Planning Commission.

Robyn Darling as an employee spoke in favor of the proposed certification based on positive treatment of employees, salary and benefits, new jobs, and revenue for the City of Lodi from other than taxpayers.

Ed Merkel as Assistant Manager for Wal-Mart spoke in favor of the proposed certification based on good employee relations for salaries, benefits, and advancement opportunities.

Andy Russicu of PCP spoke in favor of the proposed certification based on Wal-Mart's support of vendors who are unionized, sustainability and carbon footprint standards, and free enterprise. In response to Council Member Hitchcock, Mr. Russicu stated about 22% of PCP business is done with Wal-Mart.

Manroop Shergill spoke in opposition to the proposed certification based on noise considerations for local neighborhood and the lack of a need for more grocery stores. In response to Council Member Johnson, Ms. Shergill stated her home was located on Chaparell Court.

Lois Poole spoke in favor of the proposed certification based on free enterprise, customer base, and one-stop shopping ability.

Daniel Lee spoke in opposition to the proposed certification based on negative effects on other grocery stores, concerns regarding small business owners, and urban blight in the downtown area.

Don Aguillard as an employee spoke in favor of the proposed certification based on Wal-Mart's compliance with the Americans with Disabilities Act, tax dollars remaining local within the City, job creation, and overall compliance standards for employment including labor, civil rights, and equal opportunity.

Joseph Nicolini spoke in opposition to the proposed certification based on the chaos in supercenters including Stockton, and the negative effect on local goods, manufacturing, and farming.

Marlene Borchers as Store Manager at Lodi spoke in favor of the certification based on

opportunities for employees, company goals, new job projections of 450 from current 300, and community involvement.

In response to Council Member Johnson, Ms. Borchers stated Wal-Mart provides a good transition from other jobs and promotes training for advancement.

John Minnehan spoke in opposition to the proposed certification based on concerns regarding noise, traffic, and the decision of the Planning Commission to not certify.

Marguerite Jones spoke in favor of the proposed certification based on good customer service and the opportunity to purchase less expensive groceries.

Anita Curos spoke in opposition to the proposed certification based on concerns regarding urban decay, the EIR relying on older data, noise, and pollution.

Dan Sroufe spoke in favor of the proposed certification based on free enterprise and fair competition.

Ann Cerney spoke in opposition to the proposed certification based on concerns regarding the process of the public hearing.

Grace Cano spoke in favor of the proposed certification based on keeping tax dollars local and Wal-Mart's good employee relations.

Lorinda Jonard spoke in opposition to the proposed certification based on concerns regarding expending more agricultural space and the Planning Commission's decision to not certify.

Dennis Nover spoke in favor of the proposed certification based on his general favorable perception of Wal-Mart.

Mayor Hansen closed the public hearing after no additional speakers requested to speak.

In response to Council Member Mounce, Mr. Bartlam stated the City retained PMC, which was later replaced by BAE, and Wal-Mart was not involved with the preparation of the draft EIR; although, Wal-Mart will reimburse the City for its costs, which would happen with any business. Mr. Bartlam stated Wal-Mart was not involved in the initial selection for PMC, which was competitively done.

In response to Mayor Hansen, Mr. Schwabauer stated an EIR would still be needed even if the project was approved through an initiative process.

In response to Council Member Johnson, Mr. Schwabauer stated the document received today by the opponents of the project is primarily legal argument, which the City Council is not obligated to consider as the City Council is charged with making a decision based on the facts presented.

In response to Council Member Hitchcock, Mr. Schwabauer stated the City Council must consider factual evidence it is presented and it may consider the legal argument.

Discussion ensued between Mayor Hansen and Mr. Bartlam regarding the comments provided by Planning Commissioner Olson who works with economic development in the City of Riverbank, the differences between the definitions of redevelopment blight and urban decay, the blight analysis being done in the first environmental document, and the need for conclusive evidence for urban decay purposes that a particular store closing will in fact cause a physical environment of urban decay.



In response to Council Member Katzakian, Mr. Bartlam stated there will eventually be a condition of original approval with the use permit process, although it is not the matter for consideration tonight.

In response to Council Member Mounce, Mr. Bartlam stated he can give specific examples of blight in the City but not for urban decay.

In response to Mayor Mounce, Mr. King stated the fully loaded cost for a police officer in the City is approximately \$200,000.

Mayor Hansen made a motion, second by Council Member Johnson, to certify the final revised EIR regarding the Lodi Shopping Center Project located at 2640 West Kettleman Lane.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Noes: Council Member Hitchcock, and Council Member Mounce

Absent: None

C. Adjournment

Mayor Hansen adjourned the special meeting at 1:05 a.m., Thursday, December 11, 2008.

ATTEST:

Randi Johl  
City Clerk